



State Workers' Compensation Legislative Update

Amie Peters
President, WILG

August 23, 2018
Montana Governor's Conference on
Workers' Compensation
Big Sky, MT

“Grand Bargain”

the use of workers compensation laws in place of **constitutionally** guaranteed tort remedies, must provide **“significant”** benefits and any substitute considerations must provide a **“reasonable amount, and according to a reasonable and definite scale, by way of compensation for the loss of earning power incurred in the common enterprise...”**

Top Legislative Trends

01

Limitations on
medical
benefits

02

Limitations on
access to
benefits

03

Restrictions of
access to
justice



Case Study: Iowa

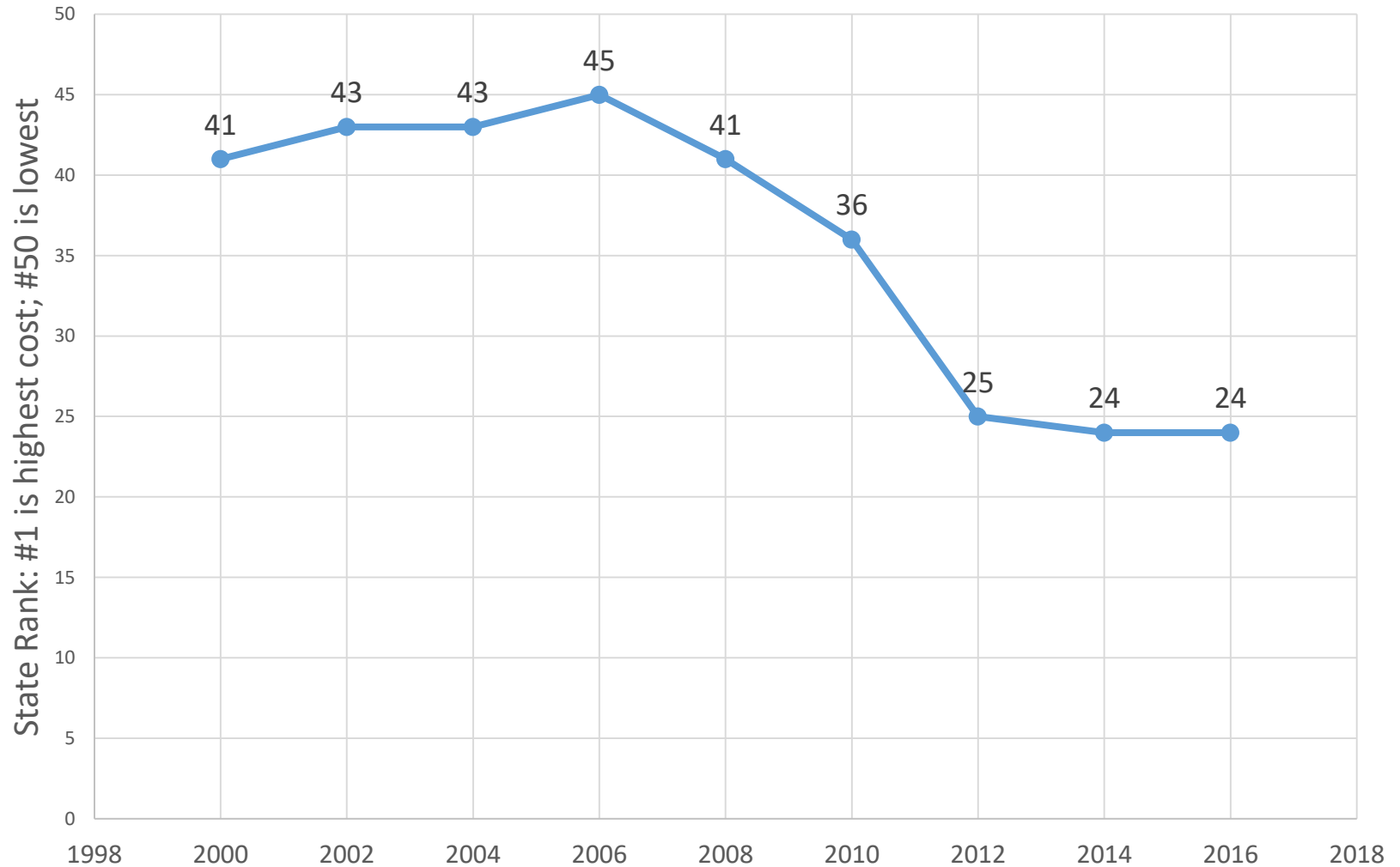
Major Changes in the 2017 Iowa Reform

- Reclassification of shoulder injuries as scheduled injuries rather than whole-body injuries
- Reduction of benefits for older workers
- Elimination of concurrent receipt of permanent total wage-loss and scheduled indemnity benefits

Proposed but Not-Enacted Provisions in the 2017 Iowa Reform

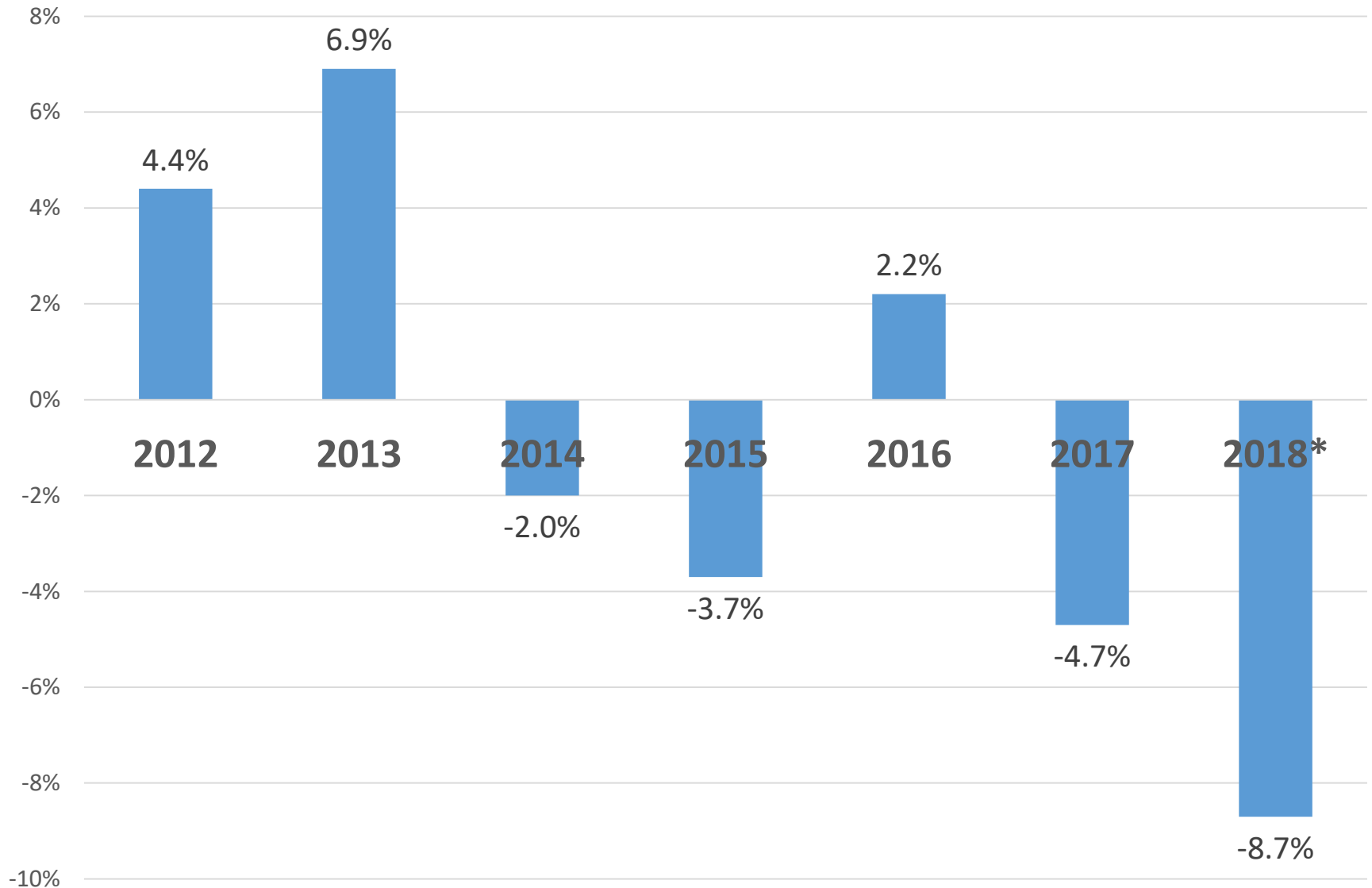
- Predominate cause standard of 50%
- Termination of benefits at age 67

Iowa's Position in Oregon's Premium Rate Ranking Study



Source: Oregon Workers' Compensation Premium Rate Ranking, years 2000-2016.

Iowa Premium Level Changes

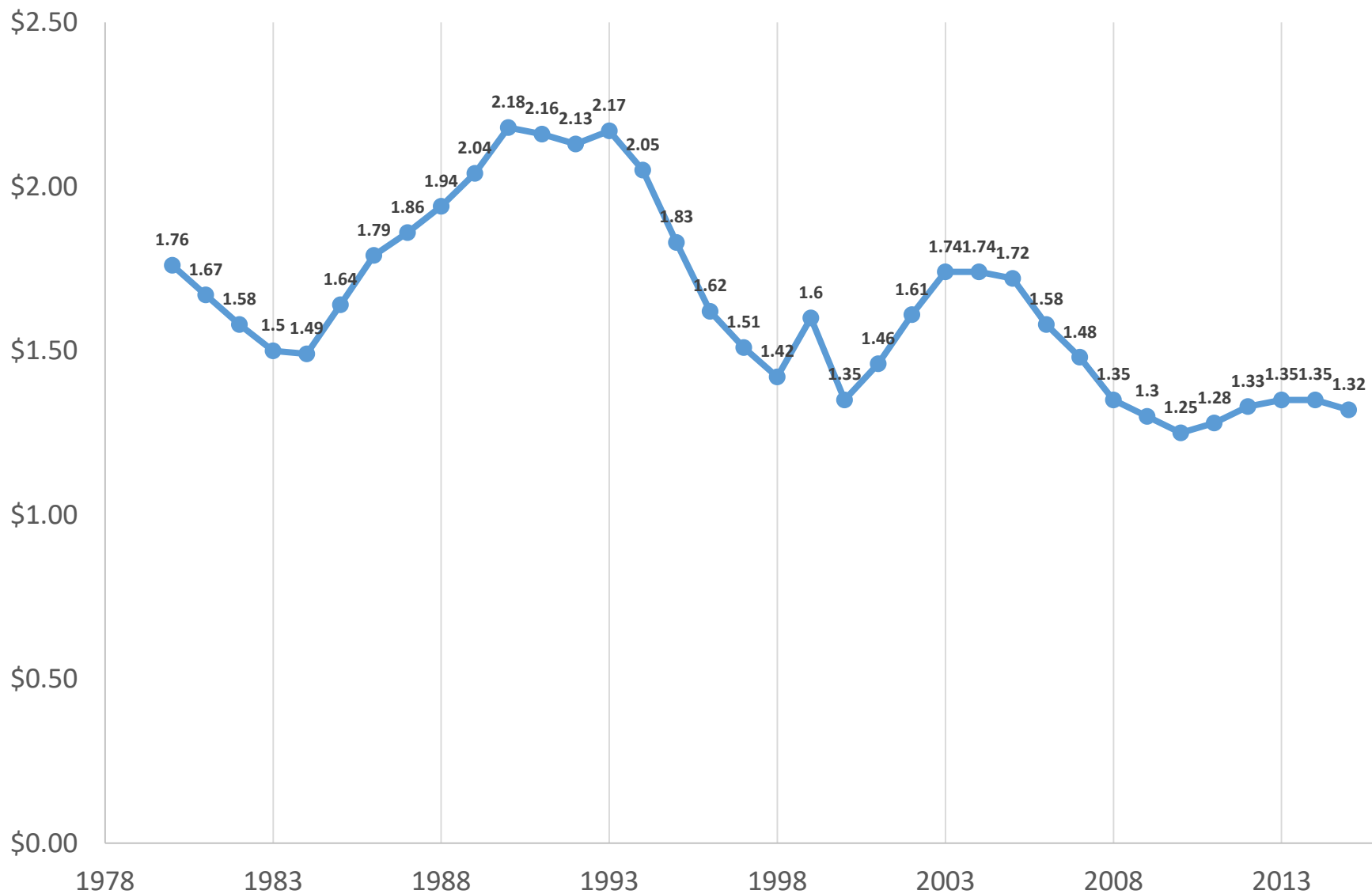


*Note: 2018 rate decrease was approved before 2017 reform legislation

Source: NCCI

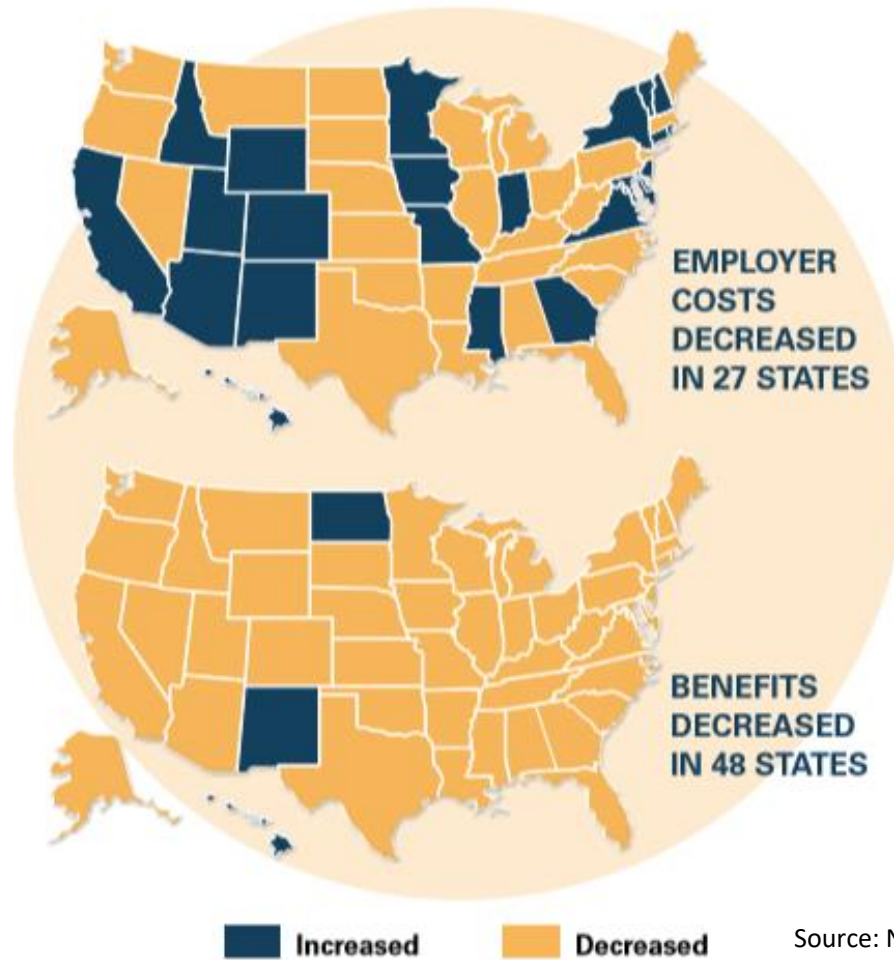


Workers' Compensation Costs Per \$100 of Covered Wages



Source: National Academy of Social Insurance.

**HOW DID BENEFITS AND COSTS PER \$100
OF PAYROLL CHANGE IN EACH STATE
BETWEEN 2011 AND 2015?**



Source: National Academy of Social Insurance, 2017.

Top Legislative Trends

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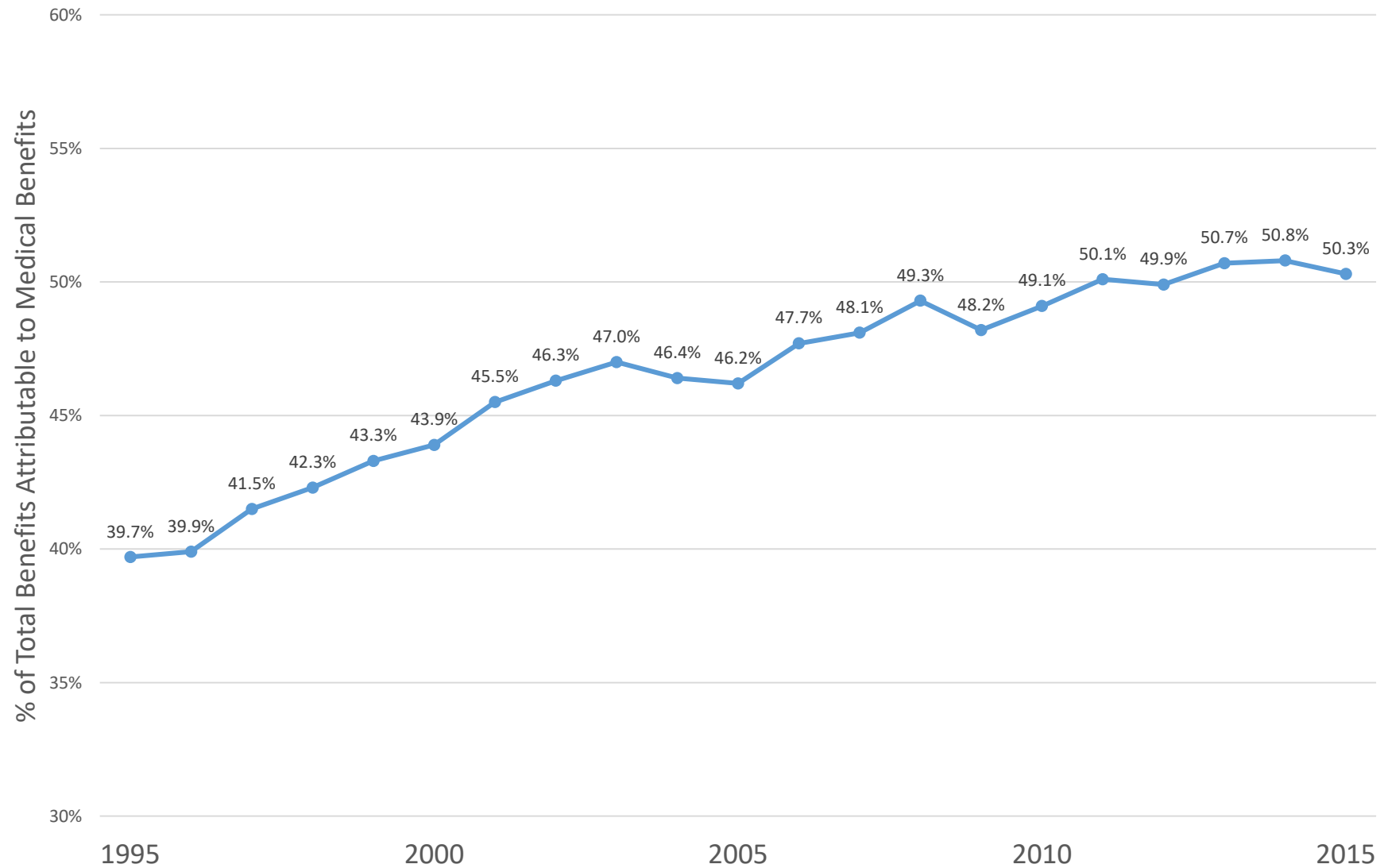
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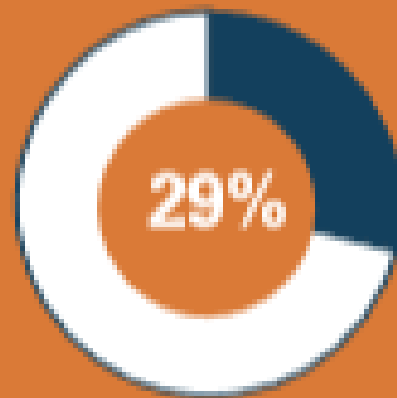
Restrictions of
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justice

The Medical Portion of Workers' Compensation Benefits has been Steadily Increasing

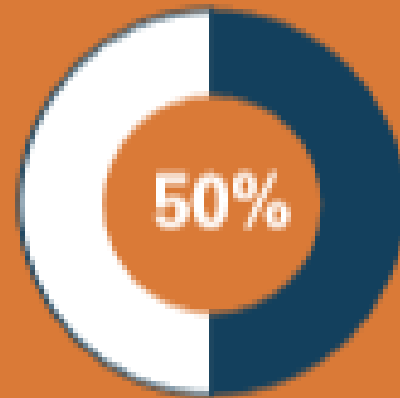


Source: National Academy of Social Insurance.

WHAT SHARE OF TOTAL WORKERS' COMP BENEFITS ARE MEDICAL BENEFITS?



1980



2015

OPTIODS

Policy Options for Addressing Opioids

- Stronger prescription drug monitoring program (PDMP) requirements (ME)
- 5-day limit on initial opioid prescriptions (NJ)
- Mediation track for opioid cases (Mass.)
- Physician registry (Ga.)
- Requirement to cover abuse-deterrent opioid analgesic drug products (PA)
- Medical marijuana (WCRI)
- CDC opioid prescribing guidelines

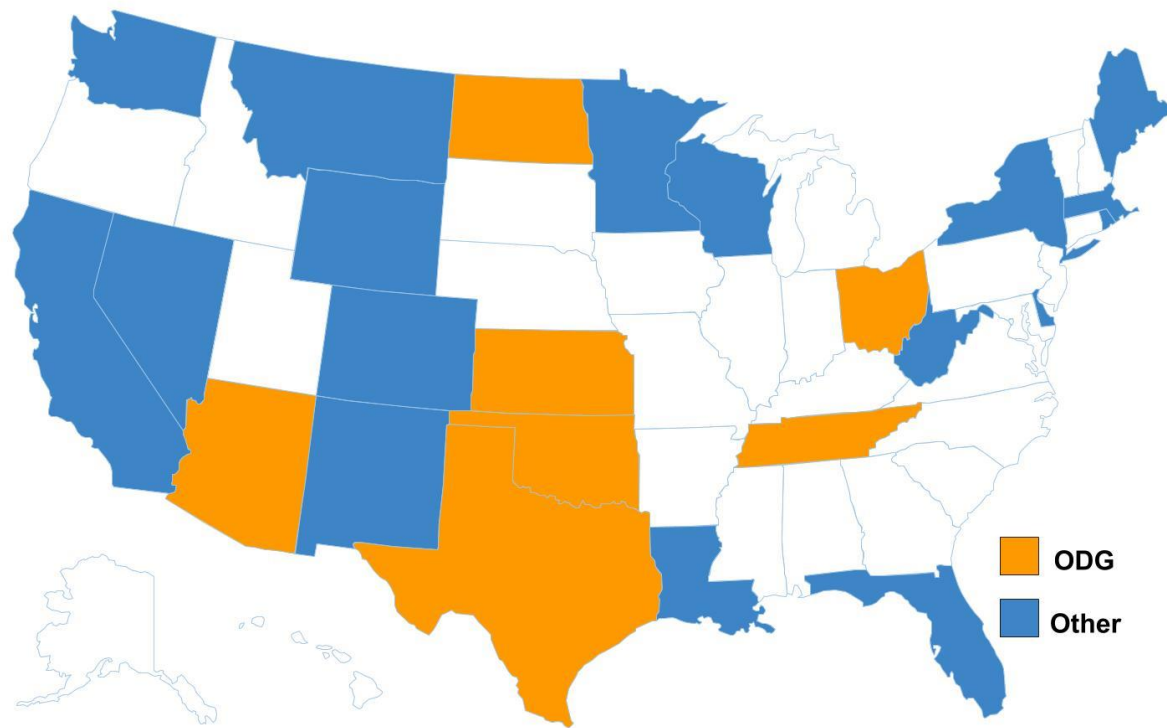
Worker-Centered Opioid Reform

All laws, rules and regulations restricting the use of opioid pain medications must:

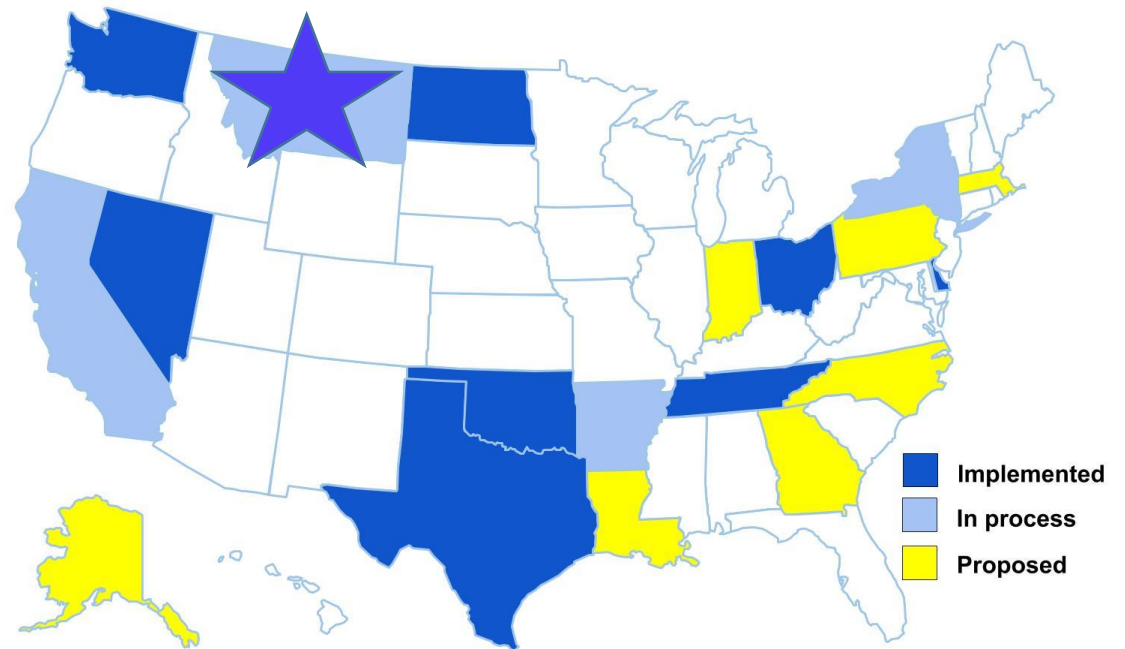
- **include reasonable alternatives aimed at reducing or relieving pain and improving functioning, with an emphasis on these alternatives having equal or greater efficacy;**
- **emphasize quality of care rather than an arbitrary reduction in the number or type of prescriptions;**
- **enhance, maintain and avoid intrusions into the physician-patient relationship;**
- **provide physicians and their patients speedy due process, including a process for seeking exceptions and variances based on patients' specific needs; and**
- **offer evaluation and treatment assisting in the reduction, tapering or cessation of opioid usage when appropriate.**



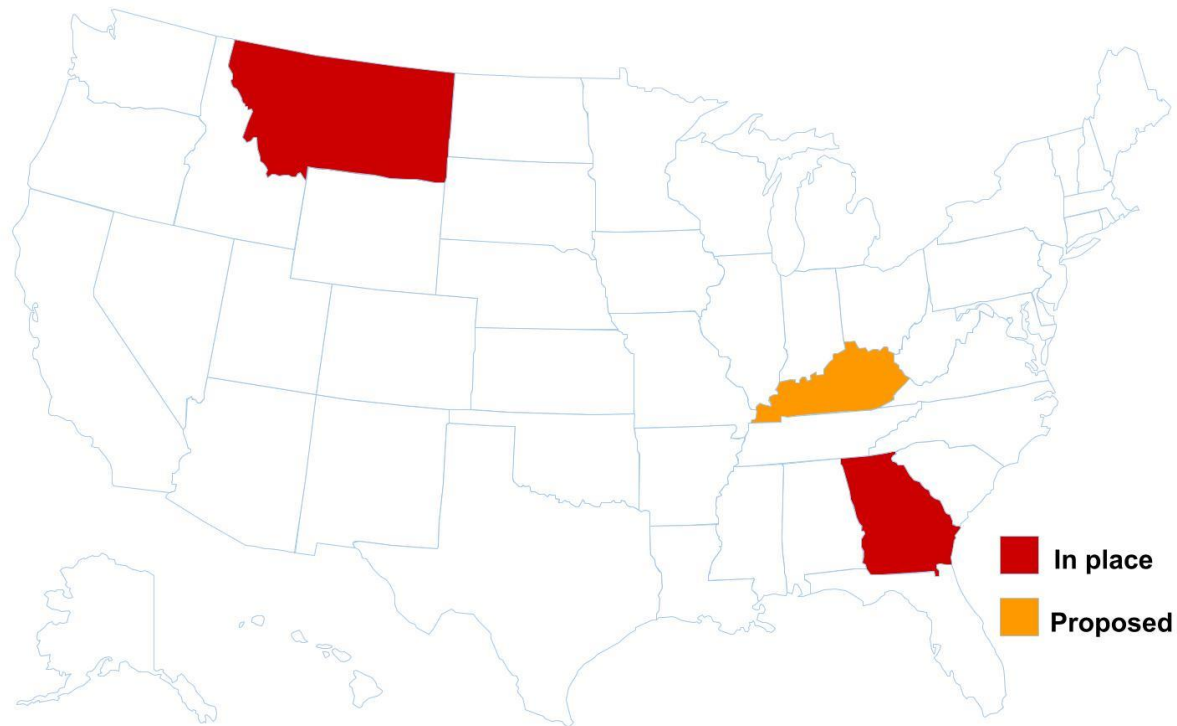
Medical Treatment Guidelines



States with Prescription Drug Formularies



Caps on Medical Benefits



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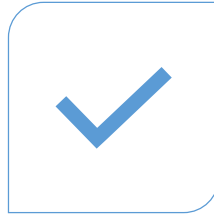
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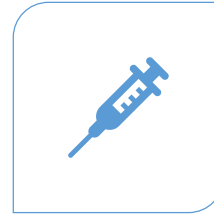
Limitations on Access to Benefits



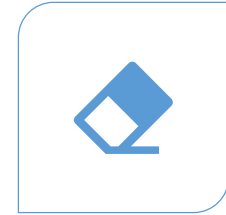
TERMINATION OF
BENEFITS AT
RETIREMENT AGE



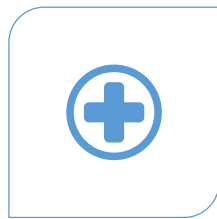
IMPAIRMENT
GUIDELINES



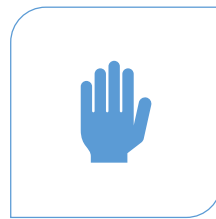
PREDOMINATE
CAUSE STANDARD



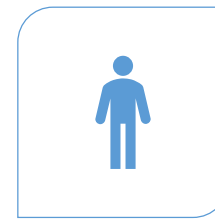
STATUTES OF
LIMITATIONS



REDUCTION OF
BENEFITS FOR
OLDER WORKERS

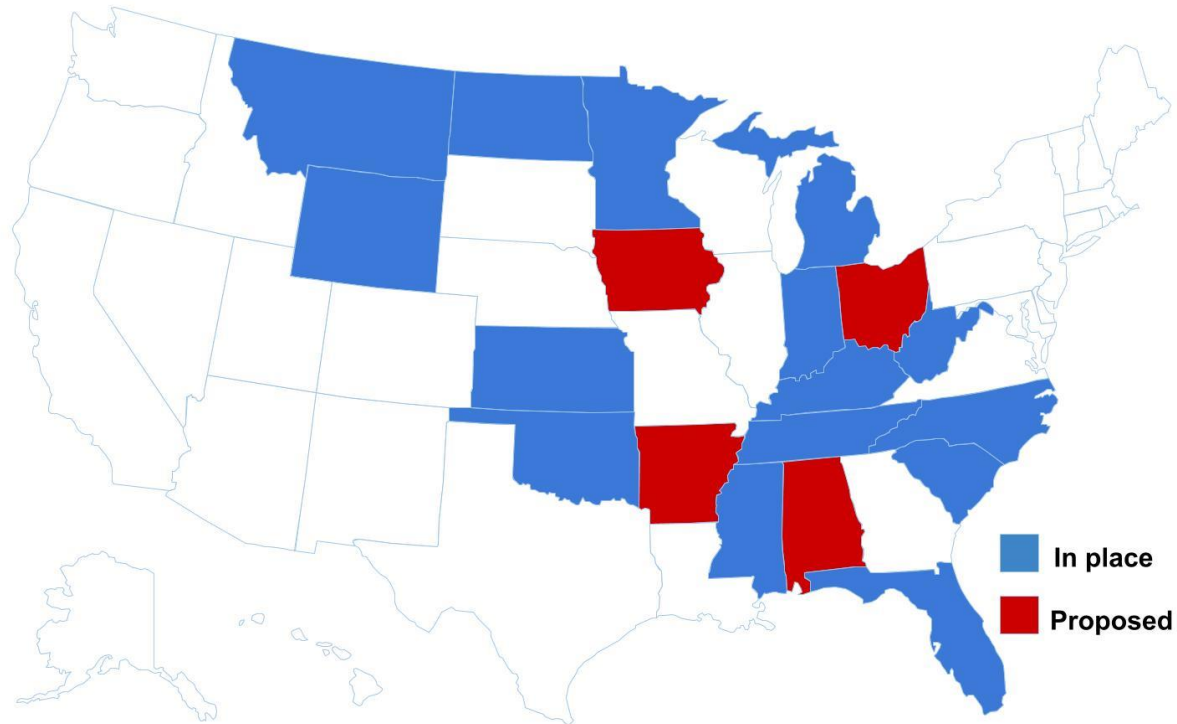


EXCLUSION OF
UNDOCUMENTED
WORKERS

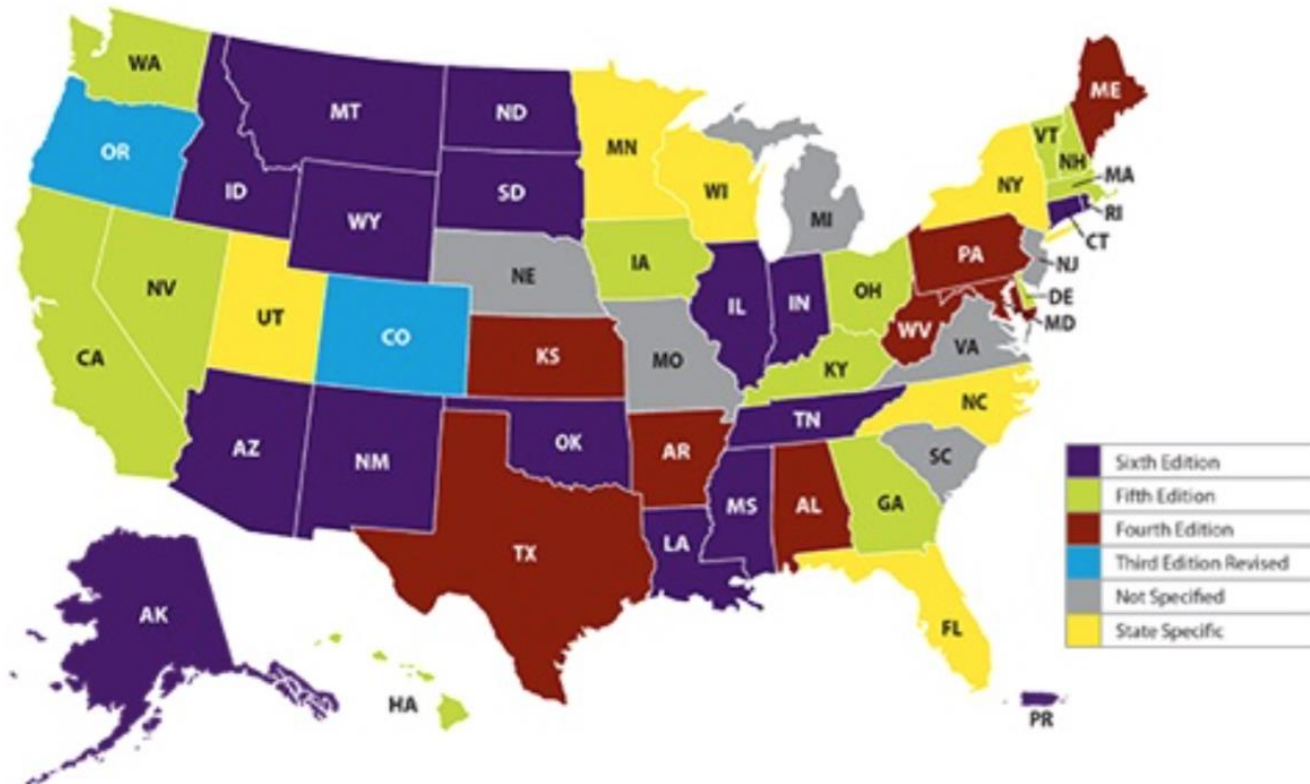


EXCLUSION OF
NONSTANDARD
WORKERS

Limits on PTD Benefits



Impairment Guidelines



Predominate Cause Standards

- 7 states with "major contributing cause" thresholds for benefits
- Proposed in:
 - Iowa
 - California

Shortened Statutes of Limitations



Reduction in Benefits for Older Workers

- Passed in Iowa
- Requires reduction in benefits based on consideration of reasonable expectation of time remaining in the workforce





Exclusion of Undocumented Immigrants

- Technically covered by workers comp in most states
- But anti-fraud rules effectively make it illegal to file a claim as an undocumented worker
- Legal challenges for reemployment

Exclusion of Independent Contractors

- Growing share of the workforce is exempt from workers' comp because of independent-contractor status
- Misclassification is most common in industries where it is most profitable: where workers' comp costs are the highest



The **gig** economy

42
million

US workers
are 1099

65
million

Projected
increase by 2020

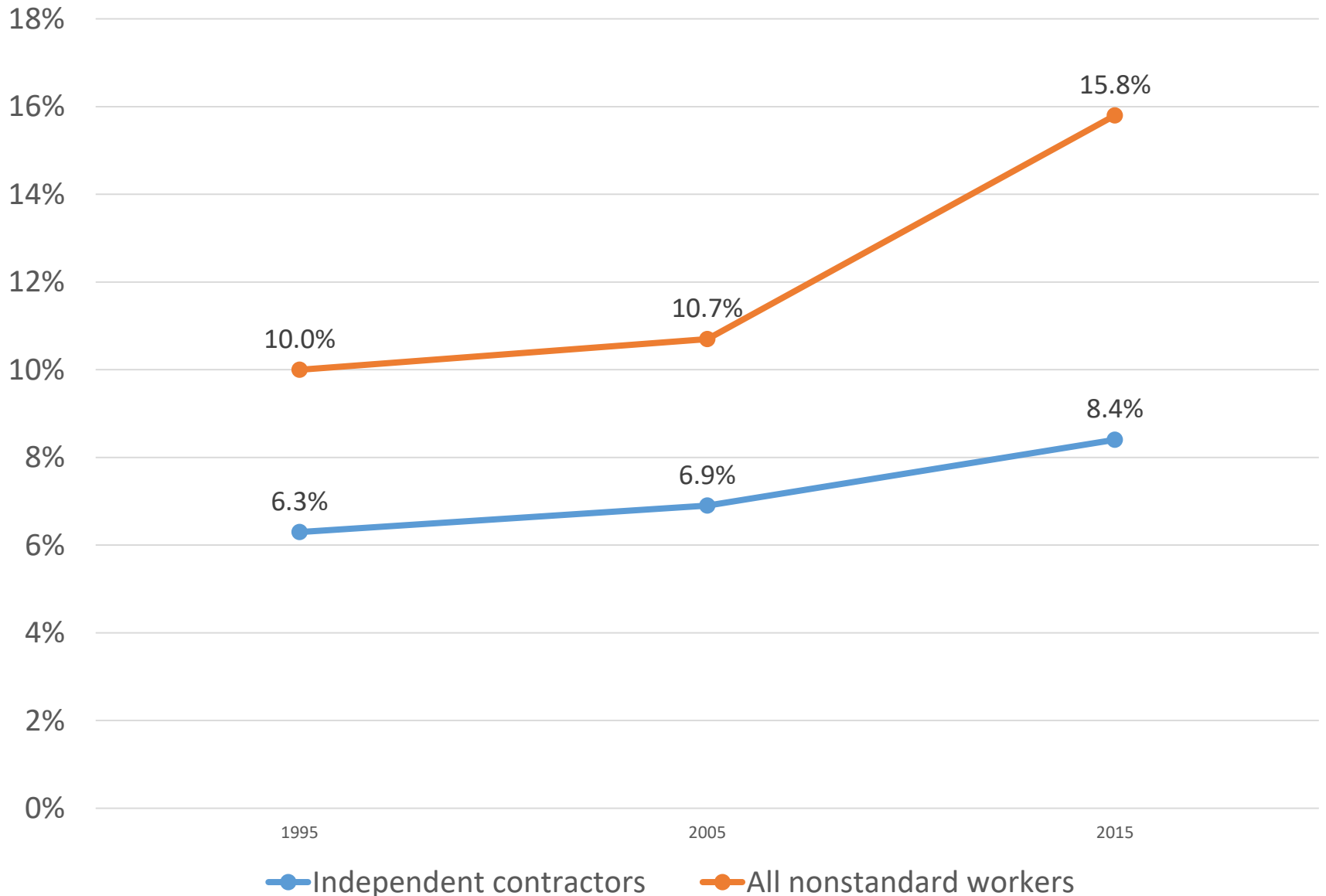
34%

of the workforce
has a second job

1 of 3

Millennials freelance

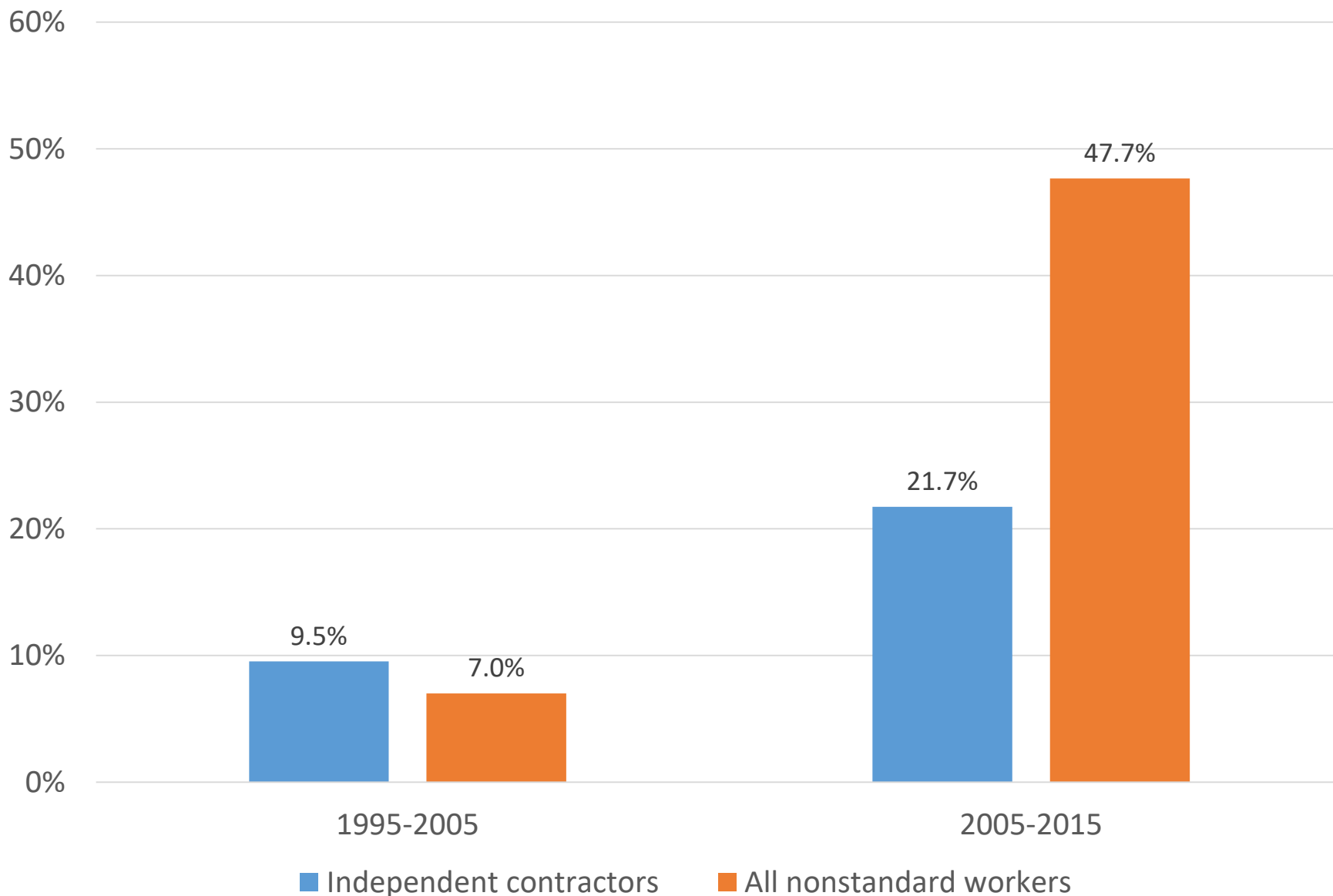
Percent of Workforce Working as Nonstandard Workers



Note: The data are for workers' *main* jobs.

Source: Lawrence F. Katz and Alan B. Krueger, 2017, "The Rise and Nature of Alternative Work Arrangements in the United States, 1995-2015," NBER Working Paper No. 22667.

Percent Increase in Share of Workforce as Nonstandard Workers



Note: The data are for workers' *main* jobs.

Source: Lawrence F. Katz and Alan B. Krueger, 2017, "The Rise and Nature of Alternative Work Arrangements in the United States, 1995-2015," NBER Working Paper No. 22667.

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Access to Justice Trends

Reconfiguring the Process

- Modifying Access to Courts/Appeals
- Making It Harder to File Claims
- Restricting Access to Attorneys

Reclassification of Judges

- North Carolina (2015)
- Louisiana (proposed 2016)
- Wisconsin (proposed 2017)
 - Eliminate appellate Labor and Industry Review Commission



Opt Out



Opt Out

BUSINESS INSURANCE.

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SEARCH



WORKERS COMP

Texas comp opt-out model could spread to other states: Report

Kristen Beckman

3/21/2017 1:39:00 PM

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Regulation

Workers Comp Cost Control

More +



The Texas Public Policy Foundation, a research and advocacy group that promotes free enterprise and notably favors the workers compensation opt-out model, released a report Tuesday analyzing the Texas nonsubscription system and says more states may try to

emulate the opt-out model.

The report titled "The Lone Star Model for Helping Injured Workers," says competition between the state's regulated workers comp system and its nonsubscription system has led to improved claims handling, cost control and better return-to-work rates. About 78% of Texas employers representing 82% of the state's private-sector employees are covered by the state's regulated comp system, the report says. Five percent of Texas employees are not covered by workers comp or alternative injury benefit plans, according to the report.

The report compares the state's opt-out system with group health plans, whereby alternative injury benefit plans set up by Texas nonsubscribers outside of workers comp can limit or expand coverage because they are not subject to statutory workers comp rules.

Sinkhole
becomes
museum piece.

CHUBB

See How ➞

Planet
breathes

Worker-Favorable Developments

01

Successful
constitutional
challenges

02

Renewed
focus on
insurer profits

03

Federal Focus
on Workers'
Compensation

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Successful Constitutional Challenges

Attorney fees

- **Florida**, 2016: *Castellanos* (due process)
- **Utah**, 2016: *IWA v. Utah* (separation of powers)
- **Florida**, 2016: *Miles* (freedom of speech)

Inadequacy of WC system

- **Florida**, 2016: *Westphal* (TTD limit violates due process) *Bosch* (cap on max benefits inadequate)
- **Florida**, 2018:
- **Alabama**, 2017: *Clower* (cap on PPD and atty fee are inadequate)
- **Pennsylvania**, 2017: *Protz* (use of AMA 6th unconst.)
- **New Mexico**, 2017: *Rodriguez* (exclusion of farm and ranch laborers unconst.)

Misclassification

- **Massachusetts**, 2018: *Camargo*

Worker-Favorable Developments

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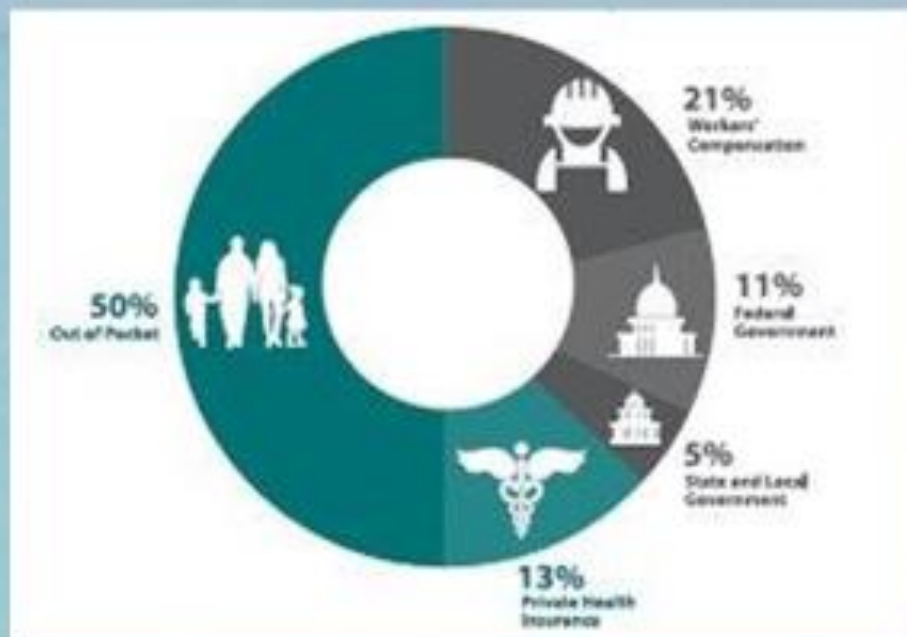
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Federal Focus
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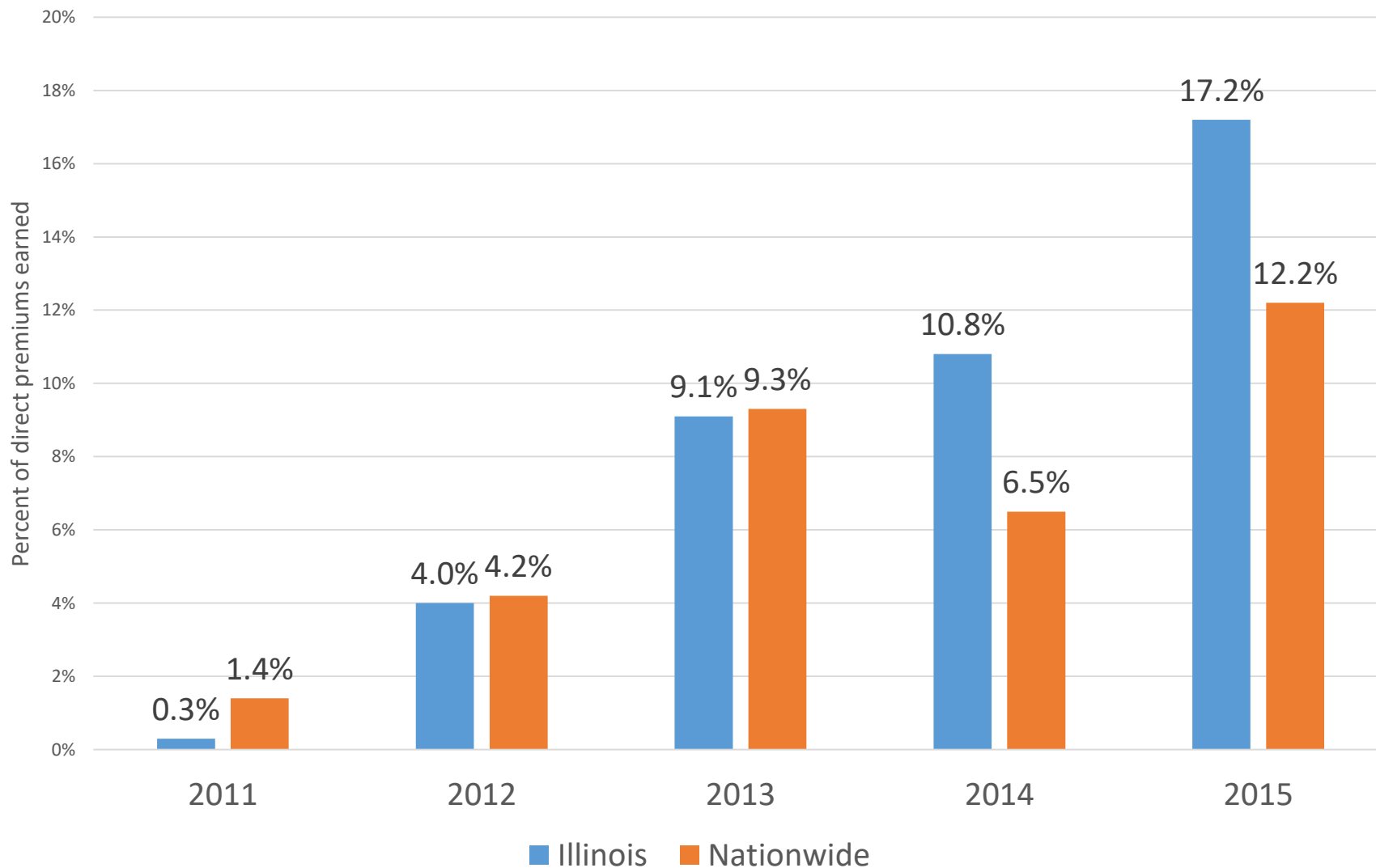
Cost Shifting

Due to cost shifting, workers' compensation only covers 21% of the cost of a work related injury.



- *The Costs of Failing to Protect Workers On The Job*, OSHA, March 2015

Workers Compensation Insurer Total Profit



Source: National Association of Insurance Commissioners (NAIC), 2017, "Report on Profitability By Line By State in 2015." Data report insurers' "Profit on Insurance Transactions," which includes profit on investments as well as underwriting profit.

Worker-Favorable Developments

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Federal Focus
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Federal Interest in Workers' Compensation: Department of Labor Report, October 2016

- “Does The Workers’ Compensation System Fulfil Its Obligations to Injured Workers?”
 - “We know the way the systems are designed does not meet the needs of injured workers”
 - “We are increasingly far from universal compliance with many of the 1972 National Commission’s 19 essential recommendations”
 - “Overly complicated procedures are frustrating for workers and employers”
 - “there is cause for alarm”

Need to explore “whether to increase the federal role in oversight of workers’ compensation programs”

- A new National Commission on Workers’ Compensation
- Reinstitution of federal tracking of changes in state Workers’ Compensation programs
- Establishment of federal “minimum standards” for state workers’ compensation programs

Federal Minimum Standards



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